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of the Sheet Metal Workers Pension Trust
of Northern California, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARDS OF TRUSTEES OF THE SHEET
METAL WORKERS PENSION TRUST OF
NORTHERN CALIFORNIA;

SHEET METAL WORKERS LOCAL 104
HEALTH CARE TRUST;

SHEET METAL WORKERS LOCAL 104
SUPPLEMENTAL PENSION FUND;

SHEET METAL WORKERS LOCAL 104
VACATION-HOLIDAY SAVINGS FUND;

SHEET METAL WORKERS LOCAL 104 AND
BAY AREA INDUSTRY TRAINING FUND;

RICK WERNER and SEAN O'DONOGHUE,
Trustees; and

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION LOCAL UNION 104,

Plaintiffs,

v.

MARTIN GUIDI, individually and doing business
as CRANE HEATING & AIR CONDITIONING;

CRANE AIR CONDITIONING, INC., a California
corporation.

Defendants.

Case No.

COMPLAINT

Parties

1. The Sheet Metal Workers Pension Trust of Northern California, Sheet Metal Workers Local 104 Health Care Trust, Sheet Metal Workers Local 104 Supplemental Pension Fund, Sheet Metal Workers Local 104 Vacation-Holiday Savings Fund, and Sheet Metal Workers Local 104 And Bay Area Industry Training Fund, are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). Plaintiffs Boards of Trustees are the named fiduciaries of Plaintiffs' Trust Funds under ERISA §402(a), 29 U.S.C. §1002(a). Plaintiffs Rick Werner and Sean O'Donoghue are Trustees of the Trust Funds with authority to act on behalf of all Trustees. Plaintiffs Board of Trustees of the Sheet Metal Workers Pension Trust are authorized to bring suit and collect monies for all Plaintiffs, including all other funds to which Defendants are obligated to contribute under the Bargaining Agreements described below. These employee benefit plans and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs".

2. Sheet Metal Workers International Association Local Union 104 ("Union") is a labor organization as defined in § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. §152(5), and is represented by counsel herein for the limited purpose of collecting union dues owing as part of the subject contribution claims of Plaintiffs, and not for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action on its own behalf.

3. Martin Guidi, individually and doing business as Crane Heating & Air Conditioning, and Crane Air Conditioning, Inc., a California corporation ("Defendants") are employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

5. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and

1 conditions of a valid Bargaining Agreement.

2 6. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,
3 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they
4 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
5 herein, each of which has a substantial ground in federal jurisdiction.

6 Venue

7 7. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action
8 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs'
9 discretion, in the district where the plan is administered, where the breach took place, or where a
10 defendant resides or may be found, and process may be served in any other district where a defendant
11 resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their
12 principal place of business in San Ramon, California. Thus, jurisdiction and venue are properly
13 grounded with this Court.

14 8. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §
15 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business
16 in this district, its duly authorized officers or agents are engaged in representing employee members in
17 this district, and the claims arise in this district.

18 Intradistrict Assignment

19 9. The basis for assignment of this action to this court's Oakland Division is that all of the
20 events and omissions giving rise to Plaintiffs' claims occurred in the County of Contra Costa, where
21 ERISA Plaintiffs' Funds and the Bargained Plans are administered, and where Defendants therefore
22 failed to fulfill their statutory and contractual obligations to Plaintiffs.

23 Bargaining Agreements

24 10. Martin Guidi, as the sole owner of Crane Heating & Air Conditioning, entered into the
25 both the Residential Agreement and the Standard Form of Union Agreement between the Union and
26 Bay Area Association of SMACNA Chapters (the "Bargaining Agreements"). The Bargaining
27 Agreements, which incorporate the terms of the Trust Agreements establishing the Trust Funds ("Trust
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1 Agreements”), require Defendants to make payment of employer contributions to Plaintiffs’ Trust
2 Funds, to the union for union dues, and to the other plans more fully described in the Bargaining
3 Agreements and the Plan Documents of the ERISA Trusts. ERISA Plaintiffs are third-party
4 beneficiaries of the Bargaining Agreements.

5 11. Martin Guidi, as the sole owner of Crane Heating & Air Conditioning, also entered into a
6 Subscription Agreement with the Sheet Metal Workers Pension Plan of Northern California (the
7 “Subscription Agreement”).

8 12. Plaintiffs are informed and believe that Defendant Martin Guidi, individually and doing
9 business as Crane Heating & Air Conditioning, and Defendant Crane Air Conditioning, Inc. are a single
10 employer.

11 13. Under the terms of the Bargaining Agreements, and the Trust Agreements incorporated
12 therein, Defendants are required to pay certain contributions to: the International Training Institute,
13 National Energy Management Institute, Robert G. Mammini Sheet Metal Workers Local Union No. 104
14 Scholarship Fund, Contractor Association Industry Fund, Sheet Metal Workers Local 104 Supplemental
15 Health Care Plan, Sheet Metal Workers Local 104 Union Dues Check-Off, Sheet Metal Occupational
16 Health Institute Trust, and the SMACNA Industry Fund (collectively referred to herein as the
17 “Bargained Plans”). Plaintiffs’ Boards of Trustees have been authorized to collect and distribute monies
18 due to the Bargained Plans under the Bargaining Agreements and Trust Agreements.

19 14. Under the Bargaining Agreements, and the Trust Agreements incorporated therein, as
20 well as the Subscription Agreement, Defendants are required to regularly pay to ERISA Plaintiffs, the
21 Bargained Plans, and the Union, certain sums of money, the amounts of which are determined by the
22 hours worked by Defendants’ employees. Contributions are due on the twenty-second (22nd) day of the
23 month following the month during which hours were worked, and are considered delinquent if not
24 received by that day. Also under the terms of the Bargaining Agreements, and the Trust Agreements
25 incorporated therein, as well as the Subscription Agreement, Defendants are required to pay liquidated
26 damages for each delinquent contribution payment, and interest on unpaid contributions from the
27 delinquent date until paid, at the rates set by the Bargaining Agreements and Trust Agreements. Finally,
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the Bargaining Agreements and the Trust Agreements, as well as the Subscription Agreement require Defendants to reimburse Plaintiffs for attorneys' fees and costs incurred in relation to the collection of Defendants' delinquent contributions.

15. The Bargaining and Trust Agreements, as well as the Subscription Agreement, further require Defendants to permit an authorized Trust Fund representative to examine such records of Defendants as is necessary to determine whether Defendants have made full payment of all sums owed to ERISA Plaintiffs. Should an audit of Defendants' records reveal Defendants have failed to provide full and prompt payment of all sums due to Plaintiffs, Defendants must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements and the Subscription Agreement.

Factual Allegations

16. Defendants have failed and refused to comply with an audit of their payroll records for the period from July 1, 2012 through June 30, 2016, and have failed and refused to pay liquidated damages and interest incurred on their late-paid contributions for the months of September and October 2015; January, February, April, July, and October 2016; and April 2017.

17. Plaintiffs are also entitled to recover any and all contributions, and all liquidated damages and interest on delinquent contributions, found due on timecards, further audit, or otherwise, including estimated contributions for any months Defendants failed to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any additional amounts due from Defendants.

FIRST CAUSE OF ACTION For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Defendants

18. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 17, above.

19. Defendants have a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreements and Trust Agreements, as well as the Subscription Agreement. Defendants also have a contractual duty under the Bargaining Agreements, and Trust Agreements incorporated therein, as well as the

1 Subscription Agreement, to permit an audit of their records to determine whether they are making full
2 and prompt payment of all sums required to be paid by it to Plaintiffs, and to pay Plaintiffs all amounts
3 found due as a result of an audit, including audit fees.

4 20. In addition, Defendants have a statutory duty to timely make the required payments to
5 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

6 21. By failing to make the required payments to Plaintiffs and refusing to permit an audit of
7 their records, Defendants breached the Bargaining Agreements and is in violation of ERISA § 515, 29
8 U.S.C. § 1145, and LMRA § 301(a).

9 22. Defendants' failure and refusal to permit the audit and pay the required contributions
10 was at all times, and still is, willful. Defendants continue to breach the Bargaining Agreements, and
11 incorporated Trust Agreements, by failing to permit the audit and pay all amounts owed as alleged. Said
12 refusal is unjustified and done with knowledge and intent.

13 23. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and
14 irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations
15 required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA,
16 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to
17 refuse to perform as required thereunder.

18 24. This Court is authorized to issue injunctive relief based on the traditional standard. As
19 set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the
20 possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The
21 balance of hardships and advancement of public interest favor ERISA Plaintiffs.

22 25. This Complaint does not in any manner relate to statutory withdrawal liability that may
23 or may not be assessed against Defendants. ERISA Plaintiffs expressly reserve the right to pursue any
24 such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents,
25 Trust Agreements, and the law.

26 Prayer

27 WHEREFORE, Plaintiffs pray as follows:
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1 1. For an order,

2 (a) requiring that Defendants comply with its obligations to Plaintiffs under the
3 terms of the Bargaining Agreements, the Trust Agreements, and the Subscription Agreement, including
4 permitting an audit of their records as requested by Plaintiffs;

5 (b) enjoining Defendants from violating the terms of those documents and of ERISA;
6 and

7 (c) enjoining Defendants from disposing of any assets until said terms have been
8 complied with, and from continuation or operation of Defendants' business until said terms have been
9 complied with.

10 2. For a judgment against Defendants as follows:

11 (a) Any unpaid contributions, due at time of Judgment, including those determined
12 as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants
13 fail to report to Plaintiffs pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

14 i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA
15 § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

16 ii. To the Union in accordance with the Bargaining Agreements.

17 (b) Liquidated damages on all late-paid and unpaid contributions in an amount
18 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA
19 § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

20 (c) Interest on all late-paid and unpaid contributions at the rates set in accordance
21 with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. §
22 1132(g)(2)(B).

23 3. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in
24 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance
25 with the Bargaining Agreements for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for
26 all Plaintiffs.

27 4. That the Court retain jurisdiction of this case pending compliance with its orders.
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1 5. For such other and further relief as the Court may deem just and proper.

2 Dated: August 24, 2017

SALTZMAN & JOHNSON
LAW CORPORATION

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4 By: _____/S/
5 Matthew P. Minser
6 Attorneys for Plaintiffs
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